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**BEFORE THE
SUBCOMMITTEE ON GROUND TRANSPORTATION
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

UNITED STATES HOUSE OF REPRESENTATIVES

JUNE 22, 2000

**The Department of Transportation's
Proposed Hours of Service Regulations for Motor Carriers**

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to discuss an issue of great importance to the motor carrier industry and the public who share our nation's highways - the Federal Motor Carrier Safety Administration's (FMCSA) proposal to revise the hours-of-service limitations for commercial motor vehicle drivers.

Although I am new to the FMCSA, having been appointed Acting Deputy Administrator by Department of Transportation (DOT) Secretary Rodney E. Slater just this past May 22, I have long had an interest in the areas of transportation and public service. Since August 8, 1998, I have been DOT's Maritime Administrator. Prior to that, I was the Senior Democratic Counsel of the U.S. Senate Committee on Commerce, Science and Transportation. Earlier in my career, I held a number of senior positions with the Interstate Commerce Commission (ICC). Thus, I have experience in a broad range of transportation and commerce issues such as regulatory reform of the trucking industry, pipeline safety, Amtrak reform, sunset of the ICC, and the Maritime Security Act of 1996.

Secretary Slater asked me to accept the challenge of guiding the FMCSA, the DOT's newest organization, in these critically important first months of its existence. I look forward to working closely with Members of this Committee, and am confident that, working together, we can chart new and better ways to ensure safety on our nation's highways.

II. THE NEW FMCSA

Mr. Chairman, this Committee is to be commended for its efforts focusing attention on the importance of motor carrier safety. This Committee developed legislation, the Motor Carrier Safety Improvement Act of 1999 (Act), signed into law by the President on December 9, 1999, that established the FMCSA as a separate agency on January 1, 2000. This Act not only makes clear that safety is to be the FMCSA's highest priority, but expressly states Congress's intent, encouragement, and dedication to the furtherance of the highest degree of safety in motor carrier transportation. Of particular importance to Congress was the expedited completion of rulemaking proceedings, including driver hours-of-service regulations. (Pub. L. 106-159, Sec. 3(3).) On May 22, we designated a Regulatory Ombudsman to expedite rulemaking proceedings as the Congress directed in the Act. (Sec. 104(f).)

After a great deal of work, we now have a proposal to revise the more than 60 year-old hours-of-service requirements. Our expressed and sole goal in producing this proposal is to reduce the estimated 755 fatalities and nearly 20,000 injuries that result each year because of fatigued commercial drivers. We propose accomplishing this by modernizing the rules governing how many hours drivers may drive and work in a day and week, and how many hours they must have to rest - particularly at the end of the work week. We also propose to improve compliance with these rules by requiring drivers who do not return home every night to have recorders on their vehicles.

We are now faced, however, with a proposed moratorium, which would prevent us from even considering this proposal. FMCSA believes that if this moratorium is adopted, lives will be lost while we wait. Let me emphasize that we have issued a proposal -- not a final rule -- and that we are actively soliciting comments from the public and all interested parties. We have not predetermined the outcome of this process. We are not wedded to each and every detail of our proposal. We are open to sound alternatives.

One of the principal objections raised to the process we are following is that we did not allow enough time for comments. We have granted the requests we received to provide an additional 90 days, for a total of 180 days until October 30, for public comment.

I would now like to provide you with more details on our proposal to amend commercial motor vehicle drivers' hours-of-service regulations.

III. BACKGROUND ON HOURS OF SERVICE

Since their adoption by the ICC in 1937, the hours-of-service regulations have changed very little. While some changes were made to these rules by the ICC in 1962, proposals to modernize the rules during the 1970s and early 1980s were terminated because they were too costly compared to their anticipated benefits. In the late 1980s and

early 1990s, the Department of Transportation received numerous requests for industry-specific exemptions and waivers from the hours-of-service regulations. These requests for exemptions highlight one of the chief criticisms of the existing rules, i.e., they are not sensitive to differences in operational characteristics of modern commercial motor vehicle operations - the “one size does not fit all” criticism. Failing to receive relief, these industries sought and obtained limited relief from the Congress in section 345 of the National Highway System Designation Act of 1995, Pub. L. 104-59 (Nov. 28, 1995). A little more than a month later, on December 29, 1995, the Congress directed the Department of Transportation in section 408 of the ICC Termination Act of 1995 (Pub. L. 104-88) to issue an advance notice of proposed rulemaking dealing with a variety of fatigue-related issues, including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, and rest and recovery cycles.

IV. THIS RULEMAKING

On November 5, 1996, the Department published an advance notice of proposed rulemaking (ANPRM) advising the public that it was nearing completion of several research projects on commercial driver fatigue, soliciting information about other research or information relevant to the subject, and requesting public comment on how the existing rules could be revised to improve safety. The agency received 1,650 comments in response to the ANPRM. It reviewed nearly 150 research studies and other documents, many of which were submitted or cited by commenters to the ANPRM. An expert panel was convened to evaluate the current rules and various agency-generated proposals in light of the latest scientific understanding of sleep and alertness, a foundation lacking in the current rules. This panel reviewed summaries of 80 (mostly peer-reviewed) research papers.

V. PRINCIPLES FOR IMPROVING HOURS-OF-SERVICE RULES

As a result of this work, the agency identified the following principles for improvement of the hours-of-service regulations:

- Establishment of a 24-hour work cycle.
- Increasing time off to allow sufficient opportunity for 7 to 8 hours of continuous sleep.
- Providing for periods of at least two nights of recovery sleep.
- Enhancing driver health and safety by providing rest periods of sufficient length for recovery from cumulative fatigue, including the period between midnight and 6:00 a.m.
- Increasing regulatory flexibility to accommodate differences in modern commercial motor vehicle operations.

VI. THE NPRM

The proposed rules would make three major changes to the current rules.

- First, the new rules would be science-based (related to sleep cycles) and put all drivers on a 24-hour daily cycle.
- Second, the rules would reduce the maximum allowable number of hours a driver can drive from 16 to 12 hours in a given 24-hour cycle.
- Third, long-haul and regional drivers would be required to use electronic on-board recording devices, ending the current requirement for drivers' paper log books.

These changes serve to emphasize drivers' need for rest. Total maximum daily on-duty time would be reduced. Many drivers would have longer continuous time available for restorative rest. Driver work schedules would be modified to conform to a more natural and regular 24-hour cycle, rather than an artificial cycle that can be as short as 18 hours, which does not produce quality sleep. And modern, readily available technology would be used to monitor driving by drivers who must be away from home overnight.

In addition to being science-based as to human sleep cycles, these proposed rules were developed to accommodate modern commercial motor vehicle use. We found that commercial motor vehicle driving generally falls into 5 types: long-haul, regional, local split-shift, local, and work vehicle. The FMCSA believes that these 5 types generally cover both truck and bus, including charter bus, operations. The proposed rules would establish slightly different requirements for each type of driver to ensure the drivers have adequate opportunity for restorative rest while accommodating the differences in their respective work schedules.

The FMCSA has estimated that these proposed rules, if adopted, would prevent approximately 2,600 crashes, 115 fatalities, and 2,995 serious injuries annually. We further estimate that the costs of these new rules would be approximately \$490 million annually, with a net value over the next 10 years of \$3.4 billion. The benefits during this 10-year period are estimated to be valued at \$6.8 billion. Thus the net benefits of this proposal would be approximately \$3.4 billion over the next 10 years.

VII. PUBLIC PARTICIPATION AND THE NEED TO MOVE FORWARD

It is imperative that I make three important points about this NPRM. First, despite a consensus that changes to the hours-of-service regulations are needed, we were unable to bring the parties together to negotiate and achieve consensus on new rules. Second, the NPRM we issued is the product of extensive study and public input, and addresses complex and controversial issues. Lastly, the NPRM is achieving its intended purpose of

moving the public debate over driver fatigue and public safety to the next level.

A. Failed negotiations

Over time, a consensus has developed that the current hours-of-service rules are outdated and need to be revised. Driver fatigue was voted the number one safety concern at the Federal Highway Administration's 1995 Truck and Bus Safety Summit, a meeting of over 200 drivers, motor carrier representatives, government officials, and safety advocates. However, there does not appear to be a consensus on how those rules should be changed.

The Department considered using negotiated rulemaking procedures under the Regulatory Negotiation Act (5 U.S.C. §§ 561-570) to develop a proposal for revising the hours-of-service regulations. In 1999, the Department contracted for the services of two impartial convenors. These convenors interviewed stakeholders and concluded that, "Based on an analysis of the background of the history of the HOS [hours-of-service] controversy and the input provided by key stakeholders, the HOS convening team does not believe that a negotiated rulemaking process would have the likelihood of producing a consensus set of recommendations to the FHWA [Federal Highway Administration, FMCSA's predecessor agency]."

B. NPRM addresses suggestions of many outside FMCSA

Over time, the agency has received numerous suggestions for improving the current hours-of-service regulation. On June 1, 1999, the National Transportation Safety Board (NTSB), recognizing that fatigue is an issue which affects all transportation modes, issued the following recommendation to the Department of Transportation: "Require the modal administrations to modify the appropriate Codes of Federal Regulations to establish scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements." Our NPRM proposes to modify the FMCSA hours-of-service consistent with these NTSB recommendations.

In the Fall of 1999, the American Trucking Associations, Inc., (ATA) submitted one of the more comprehensive sets of proposals for regulatory change. An ATA Hours of Service Subcommittee developed 16 recommendations for future hours of service rules. While the FMCSA proposal differs from the ATA recommendations on several points, it is important to note that the FMCSA NPRM addresses all the points covered by the ATA recommendations and is quite close to the ATA recommendations on many points.

Similarly, many industries that use commercial motor vehicles in the furtherance of their primary business activities have argued that the current rules are not sensitive to the differences in other (i.e., not for-hire trucking) industry uses of commercial motor vehicles.

The FMCSA NPRM avoids a “one-size-fits-all” approach by separating motor carrier operations into 5 types and proposes different treatment for each. While the motor coach industry was not treated uniquely in the proposal, because the agency believes that motor coach operations are similar to one or more of the 5 types identified in the proposal, the FMCSA specifically solicited additional public comment and information on whether its assumptions about bus operations are accurate.

Scientists, safety advocates, and the National Transportation Safety Board have stressed the need to revise the existing rules to provide more time for drivers to obtain sufficient, quality sleep and to improve compliance with hours-of-service limitations. The FMCSA NPRM emphasizes rest and proposes to require long-haul and regional drivers, the two categories where there is the greatest problem in ensuring compliance with existing rules, to use electronic on-board recording devices to verify compliance with hours-of-service regulations.

FMCSA welcomed and reviewed these comments and public input. We carefully considered all information received while developing the NPRM addressing all of these complex and controversial issues.

C. Continuing public dialogue

The NPRM issued on April 24, 2000, and published in the Federal Register on May 2, 2000, is the product of many years of work and much public input. We believe that the revised HOS rules proposed will reduce the acute and cumulative fatigue that appears to beset many drivers and thus prevent a significant number of crashes and fatalities. At the same time, the proposed rules seek to limit major compliance costs on those segments of the motor carrier industry that have the lowest number of fatigue-related CMV crashes, and focus the major compliance costs on those segments with the highest number of fatigue-related CMV crashes.

Nevertheless, the NPRM is a *proposed* rulemaking. For this reason, we have extensively solicited public comments. We have extended our comment period in order to allow for the submission of as much relevant data as possible. The deadline for comments is now October 30, 2000. We also have scheduled a series of 8 public, two-day hearings—to be held across the country—which are currently underway. The purpose of the hearings is to gather additional information and afford all interested parties and the public at large another opportunity to tell us what they think of our proposal. To date, we have received over 2000 comments in response to the NPRM.

This continuing public dialogue is critical—both to our understanding of the needs of those we regulate and the safety concerns of the American public, as well as to the eventual acceptance of the hours-of-service rules that are ultimately adopted. This is a vital point. Some are advocating that Congress intervene and prohibit analysis of the

information and views FMCSA receives on this topic. This would be completely contrary to the action taken by Congress just last December when it established the FMCSA. The Administration is extremely concerned about the provision in the Senate-passed version of the DOT Appropriations bill which would stop the Department from taking action regarding the drivers' hours-of-service rules, including even gathering data and comments from interested parties.

The hours-of-service rulemaking is part of FMCSA's safety action plan, which supports an overall goal of reducing truck-related fatalities by 50 percent. In 1999, there were 5,203 truck-related fatalities. We estimate that fatigue is directly or indirectly involved in 15 percent of all fatal and injury crashes involving large commercial motor vehicles - approximately 755 fatalities and more than 19,700 injuries annually. Stopping this rulemaking now would prevent us from addressing this important safety issue.

Congress has highlighted the importance of the commercial driver's hours-of-service regulations and chastised the agency for its slow pace. This NPRM responds not only to the Congress's and Secretary Slater's challenges to improve motor carrier safety generally. It also specifically responds to Congress's direction in section 345 of the NHS Designation Act to review industry-specific hours-of-service exemptions granted by Congress in that Act. Moreover, in section 113 of the Hazardous Materials Transportation Act of 1994 the Congress required the agency to define supporting documents used to verify drivers' hours-of-service. While the agency published an NPRM for this purpose on April 20, 1998, the NPRM we are discussing today supercedes that effort, because we believe it is important to address information collection and enforceability of the rules together with substantive changes. One of the consistent complaints we have heard about the existing rules is that they are widely violated. Enforceability has been a key consideration in our development of this NPRM. Stopping this rulemaking at this time would also curtail our review of current industry-specific exemptions and the limitations of current paperwork requirements used to monitor and enforce compliance, both mandated by Congress.

VIII. CONCLUSION

Mr. Chairman and Members of the Committee, we believe continuing the dialogue on this issue is essential if we are to have any reasonable chance of achieving the ambitious goal of reducing commercial vehicle related fatalities by 50%. Stopping all work on this issue, simply because there are differences of views about how best to proceed, is counterproductive. You have my assurance that we have open minds on this complex subject. Let's keep working together. I will be happy to answer any questions you may have. Thank you.